

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:	§	CASE NO. 18-34658
	§	
HOUTEX BUILDERS, LLC,	§	Chapter 11
	§	
DEBTOR	§	Jointly Administered

**CD HOMES, LLC'S OBJECTION TO THE CLAIM
OF CHARLES C. FOSTER**

THIS IS AN OBJECTION TO YOUR CLAIM. THE OBJECTING PARTY IS ASKING THE COURT TO DISALLOW THE CLAIM THAT YOU FILED IN THIS BANKRUPTCY CASE. YOU SHOULD IMMEDIATELY CONTACT THE OBJECTING PARTY TO RESOLVE THE DISPUTE. IF YOU DO NOT REACH AN AGREEMENT, YOU MUST FILE A RESPONSE TO THIS OBJECTION AND SEND A COPY OF YOUR RESPONSE TO THE OBJECTING PARTY WITHIN 30 DAYS AFTER THE OBJECTION WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE OBJECTION IS NOT VALID. IF YOU DO NOT FILE A RESPONSE WITHIN 30 DAYS AFTER THE OBJECTION WAS SERVED ON YOU, YOUR CLAIM MAY BE DISALLOWED WITHOUT A HEARING.

A HEARING HAS BEEN SET ON THIS MATTER ON DECEMBER 4, 2019 AT 11:00 A.M. IN COURTROOM #403, 515 RUSK AVE., HOUSTON, TX 77002.

TO THE HONORABLE JEFFREY NORMAN, UNITED STATES BANKRUPTCY JUDGE:

Pursuant to 11 U.S.C. §§ 105(a) and 502 and Fed. R. Bankr. P. 3007, CD Homes, LLC ("***CD Homes***") files this its objection to the Claim of Charles C. Foster ("***Claimant***") and will respectfully show the Court as follows:

1. CD Homes is an unsecured creditor of HouTex Builders, LLC, the Debtor herein ("***Debtor***").
2. Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code on August 23, 2018 (***the "Date of Petition"***). To the best of CD Homes' knowledge

and belief, from and since the Date of Petition, the Debtor has maintained possession of its property, and has continued to remain in control of its ongoing business affairs as a Debtor-in-possession pursuant to the provisions of 11 U.S.C. §§ 1107 and 1108.

3. This Court has jurisdiction over this Objection pursuant to 28 U.S.C. § 1334. This Court may hear and determine this Objection under the standing order of referenced issued by the United States District Court for the Southern District of Texas under 28 U.S.C. § 157. This matter is a "core proceeding" as that term is defined in 28 U.S.C. § 157(b). Venue of this proceeding is proper in this district under 28 U.S.C. §§ 1408 and 1409.

4. On or about December 31, 2018, Claimant filed his unsecured proof of claim number 17 in the amount of \$3,649,386.24 (*the "Claim"*). A true and correct copy of the proof of claim with exhibit is attached hereto as *Exhibit A*.

5. CD Homes files this objection to the Claim pursuant to Sections 502, 507, 510(b) and 547 of the United States Bankruptcy Code.

6. Claimant, Charles Foster, is an insider of the Debtor.¹

7. Between ninety days and one year before the date of the filing of the petition, Claimant received preferential payments from Debtor totaling \$7,456.30. CD Homes objects to the Claim to the extent and until Claimant has repaid the Debtor's estate in full for all preferential payments pursuant to Section 547(b)(4)(B).

8. CD Homes further asserts that the Claim should be disallowed because it is not presently due and owing; instead, it is a contingent, unsecured claim for potential liability in an

¹ See, Dkt. No. 38; Statement of Financial Affairs, ¶28. (Charles Foster is the sole member of Debtor, owning 100% membership interests in and to Debtor.)

undetermined amount which may or may not arise in favor of Community National Bank pursuant to a personal guaranty.²

9. The Claim is described as follows: “*Contingent Secured Claim is secured by Lender’s mortgages & UCC to be transferred to Foster if Foster obtains an assignment of the Claim.*”³

10. By his own admission, the Claimant does *not* own a secured claim. The Claimant acknowledged that a third party lender – and not the Claimant – is the purported owner of a secured claim against Debtor’s estate. Therefore, the Claim asserted by Claimant is, at best, unsecured. For the foregoing reasons, CD Homes objects to Claimant’s classification of the Claim as a contingent secured claim.

11. If the Claim is not disallowed, then in the alternative, the Claim should be subordinated to the claims of other unsecured creditors. The Claimant is the sole member owning one hundred percent (100%) of the membership interests in and to the Debtor⁴ and the Claim arises with respect to monies either personally guaranteed by Claimant pursuant to Debtor’s contractual obligation to fund equity⁵ or invested by the sole member in the operations of Debtor as equity.⁶

² *In re All Media Properties, Inc.*, 5 B.R. 126, 133 (Bankr. S.D.Tex. 1980), *aff’d* 646 F.2d 193 (5th Cir. 1981) (A claim is contingent as to liability if the debtor’s legal duty to pay does not come into existence until triggered by the occurrence of a future event and such future occurrence was within the actual or presumed contemplation of the parties at the time the original relationship of the parties was created.)

³ *See* Claimant’s Proof of Claim Number 17-1, ¶9.

⁴ *Dkt. No. 38; Statement of Financial Affairs*, ¶28.

⁵ *See*, Investor Agreement between Debtor and CD Homes, LLC, §6, 8.

⁶ *See*, Proof of Claim Number 17-1, Exhibit 7, Part I (contingent secured claim arising from personal guaranty) and Part II (payment for goods and services in connection with the business and operations of Debtor).

12. In support of CD Homes' Objection, attached hereto as **Exhibit B** is the Affidavit of Robert Parker as the duly authorized agent of CD Homes.

WHEREFORE, CD Homes requests that its objection be sustained; that the Claim made the subject of this Objection be disallowed or, in the alternative, subordinated to all other allowed unsecured claims; and for such other and further relief as the Court deems just.

Respectfully submitted this 22nd day of October, 2019.

FUQUA & ASSOCIATES, P.C.

By: /s/ Richard L. Fuqua
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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Objection was served by first class mail to the parties listed below this 22nd day of October, 2019. Subscribers to the Court's electronic noticing systems received notice via that system.

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/s/ Richard L. Fuqua
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